

STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

April 7, 2014

Tim Crowley, President
Nevada Mining Association
201 West Liberty Street, Suite 300
Reno, NV 89501

Re: Comments of the Nevada Mining Association on the Draft Nevada 2012 Integrated Report

Dear Mr. Crowley,

Thank you for the Nevada Mining Association's (NvMA) comments regarding Nevada's draft 2012 Integrated Report (Draft IR). The NvMA expressed concern that the Nevada Division of Environmental Protection (NDEP) is including waters in the Draft IR that do not meet Clean Water Act (CWA) sections 303(d) and 305(b) reporting requirements. NDEP acknowledges NvMA's concerns about the inclusion of non-jurisdictional waters and provides the following responses to specific points raised in the NvMA letter.

NvMA Comment I. Nevada is not required to include non-jurisdictional waters in its submissions to EPA under CWA sections 305 and 303(d).

NDEP Response: NDEP agrees that non-jurisdictional waters need not be included in the IR. However, in the practical sense, NDEP does not have the staff or resources to address NvMA's broad assertion that many dry streambeds and ephemeral waters are not jurisdictional; nor does NDEP have the authority to make jurisdictional determinations (JDs). JDs are issued by the U.S. Army Corps of Engineers (Corps) and/or the U.S. Environmental Protection Agency (EPA) and are usually valid for five years from the date of the determination letter.

The NDEP Bureau of Water Quality Planning (BWQP) will accept Corps or EPA approved JDs (effective during the IR assessment period) on a case by case basis and will not include non-jurisdictional waters in the IR. For example, in response to the Draft IR, Barrick Gold of North America, Inc. submitted non-jurisdictional determinations issued by the Corps for Boulder, Bell, Brush, and Rodeo Creeks. Based on the JDs, NDEP will not include these waters in the final 2012 IR.

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NvMA Comment II. Including non-jurisdictional waters in Nevada's submissions to EPA under CWA sections 305 and 303(d) creates regulatory uncertainty and is a poor policy decision.

NDEP Response: NDEP has not distinguished between jurisdictional and non-jurisdictional waters for CWA sections 303(d) and 305(b) reporting in past years. Reports have been released for public comment and submitted to EPA in 1992, 1994, 1996, 1998, 2002, 2004, 2006, and 2008-10. No relevant comments regarding jurisdictional waters were received from the public for any of these previous actions. As discussed above, it is not practical for NDEP to make this distinction for 303(d) and 305(b) reporting without a JD from the Corps or EPA. For 2012 and future CWA 303(d) and 305(b) reporting, BWQP will accept Corps or EPA approved JDs (effective during the IR assessment period) on a case by case basis and will not include waters determined to be non-jurisdictional in the IR.

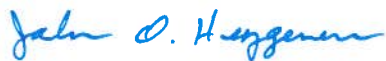
NvMA Comment III. Including non-jurisdictional water in Nevada's submissions to EPA under CWA sections 305 and 303(d) exceeds NDEP statutory grant of authority.

NDEP Response: For 2012 and future CWA 303(d) and 305(b) reporting, BWQP will accept Corps or EPA approved JDs (effective during the IR assessment period) on a case by case basis and will not include waters determined to be non-jurisdictional in the IR.

Nevada's final 2012 Integrated Report has been submitted to EPA for approval and is available at <http://ndep.nv.gov/bwqp/303dlist2012.htm>. The assessment period for the 2014 IR is October 1, 2007 to September 30, 2012. BWQP is in the process of compiling data and information for that report and we encourage NvMA and other entities to submit applicable Corps or EPA approved JDs as soon as possible for consideration during development of the 2014 IR.

Please contact me at (775) 687-9449 if you have any questions or would like to further discuss these matters.

Sincerely,



John O. Heggeness, Supervisor
Water Quality Standards and Monitoring
Bureau of Water Quality Planning

Cc: Dave Gaskin, P.E., Deputy Administrator, NDEP
Alan Tinney, P.E., Chief, Bureau of Water Pollution Control, NDEP
Bruce Holmgren, P.E., Chief, Bureau of Mining Regulation and Reclamation, NDEP
Kathy Sertic, Chief, Bureau of Water Quality Planning, NDEP